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Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)

CRIMINAL APPEAL No. 1023/97

APPELLANT
IN JAIL

Chhabilal aged 41 years,
S/O Ankur Cultivator R/O
Anarkot, Police Station: Saraypali,
Tah: Mahasamund, RAIPUR (M.P.)

- v/s -

RESPONDENTS : State of M.P. through Police Stn
Saraypali, Distt: Raipur (MP)

APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL

PROCEDURE :

69311

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक

C.A. No. 1023/97
सन् 2007

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH:</u> HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ CRIMINAL APPEAL NO. 1023 of 1997 Appellant : Chhabilai Vs. Respondent : State of Madhya Pradesh Shri J. A. Lohani, learned counsel for the appellant. Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri Ravindra Agrawal, learned Panel Lawyer for the respondent/State. <u>ORAL JUDGMENT</u> (12.04.2006) <u>L.C.Bhadoo, J</u> By this appeal under Section 374(2) of the Criminal Procedure Code, the accused/appellant has questioned the legality, propriety and correctness of the judgment of conviction and order of sentence dated 25.03.97 passed by learned Additional Sessions Judge, Mahasamund in S.T. No. 384/94 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Section 302 of the IPC for committing the murder of one Sakoor Soura and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo RI for three months. 2. Case of the prosecution, in brief necessary for disposal of this appeal was that on 12.06.94 at about 4.00 p.m., deceased Sakoor Soura went along with his brother Saheb Ram (Complainant) to the agricultural field on a tractor of	

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C.A. No. 123/87
सन् 2007

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	one Mukesh Sahu (Mohdawale) for the purpose of ploughing and sowing the field. Accused/appellants Ankur and Chhabilal came there from the village side. Accused/appellant Chhabilal was carrying axe in his hand and they started quarrelling with Sakoor Soura. Thereafter accused Chhabilal assaulted twice with axe on Sakoor Soura on account of which he died. At this Saheb Ram got terrified and left the place. He went to the village and informed about the incident whereupon the Kotwar - Ekadasiya went to the site and by that time Sakoor Soura was already dead. Thereafter complainant Saheb Ram along with the Kotwar went to the police station Saraipali and lodged the report D-1. On receiving the report, S.H.O. registered the case against the accused persons for commission of the offence under Section 302/34 of the IPC and left for the scene of occurrence, prepared panchnama P-5 of the body of deceased Sakoor. Clothes of the deceased were taken into possession under P-6. The accused/appellant while in the police custody gave memorandum P-2 regarding the place where he kept the weapon of offence-axe and in pursuance of that he got recovered the blood stained axe under P-3 from his house. Clothes of the accused/appellant i.e. one cotton <i>Dhoti</i> was taken into possession under P-4. The recovered articles were sent for chemical examination to Forensic Science Laboratory, Raipur. Body of Sakoor was sent for post mortem examination to the Primary Health Centre, Saraipali under P-10 where Dr. V. A. K. Koshariya conducted the post mortem and prepared the post mortem report P-18 in which he opined that the death is due to injuries caused to the brain substance, haemotoma and fracture of vital bones. The Investigating Officer took into possession plain soil and blood stained soil from the place of occurrence under P-12. He also took into possession one fertilizer-bag, one bamboo basket, one key of the bicycle and one pair of plastic slipper	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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	(chappa) under P-11. Site plan of the place of occurrence was prepared by the Patwari under P-14. Khatooni of the land record was also taken into possession under P-16. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Mahasamund who in turn committed the case to the Sessions Judge, Raipur from where the learned Additional Sessions Judge, Mahasamund received the case on transfer for trial.	
3.	The prosecution in order to establish the crime against the accused/appellant examined fifteen witnesses. Statement of the accused Chhabilal was also recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he has been falsely implicated in the crime. However, accused/appellant Ankur died during trial in Central Jail, Raipur.	
4.	After hearing the respective counsel for the parties, learned Additional Sessions Judge convicted and sentenced accused/appellant Chhabilal as mentioned in paragraph one of this judgment.	
5.	We have heard Shri J. A. Lohani, learned counsel on behalf of the accused/appellant and Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri Ravindra Agrawal, P.L. on behalf of the State.	
6.	Homicidal death of Sakoor Soura is not in dispute.	
7.	As far as the involvement of the accused in the crime in question is concerned, P.W.-1 Phulbutoo (complainant) who lodged the report in the	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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	police station Saraipali, has stated that on the fateful day at about 4.00 p.m. he was at his agricultural field which is adjoining to the field of Sakoor. Sakoor was also working in the field which was of accused Ankur. Accused/appellants Ankur and Chhabilal came from the side of the village. Chhabilal was carrying axe in his hand and Ankur was empty handed. Deceased Sakoor was assaulted thrice and thereafter, being terrified, he ran away to the village and became unconscious. He further stated that deceased Sakoor was his uncle's son and then he lodged the report in the police station.	
8.	In the cross examination, in paragraph three of his evidence he has stated that the field in which the incident took place belongs to the accused persons and they were in possession. Deceased Sakoor used to live in another village namely Patherapali. He had no relation with the disputed field and he had a separate agricultural field. In the cross examination he has denied the fact that he went along with Sakoor on a tractor and he said that he had not given the statement to the police. Even this portion of the FIR he has denied.	
9.	P.W.-3 Mukesh had stated that on the date of incident, he went for ploughing the field on a tractor where both the brothers namely Ankur & Sakoor were quarrelling. He does not know that the field belongs to whom and this witness has been declared hostile.	
10.	From the evidence of P.W.-1, it is established that accused/appellant Chhabilal was carrying axe in his hand at the time of the offence and he assaulted thrice with the axe on the deceased and the axe in question was recovered at the instance of the accused from his house. Therefore from the	

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	evidence of this witness the involvement of the accused Chhabilal assaulting the deceased with the axe is established.	
11.	Learned counsel for the accused/appellant argued that since the agricultural field was in possession of Ankur and Chhabilal and when the deceased started ploughing, the accused persons went there to persuade him not to plough the field, thereafter quarrel took place and in that process Chhabilal assaulted him in a heat of passion and therefore offence against accused/appellant Chhabilal does not travel beyond Section 304-I of the IPC.	
12.	On the other hand Shri U.N.S. Deo, learned Additional Public Prosecutor on behalf of the State supported the judgment of the trial Court.	
13.	Having heard the counsel for the parties, we have perused the evidence. It is evident from the evidence of P.W.-1 Phulbutoo who had stated that the field was in possession of the accused persons and the deceased was residing in a separate village namely Patherapali and he had no connection with the field where the incident took place as he had his separate field. Even in the statement under 161 of the Cr.P.C. and in the First Information Report, this witness has stated clearly that on the fateful day Sakoor came on a tractor and took him along with him, with a request to show him the field and way to his field though the field was in possession of Ankur and Chhabilal, however Chhabilal assaulted the deceased with axe and there is nothing on record that in any manner deceased Sakoor tried to assault Chhabilal therefore, in the above circumstances, we are of the considered opinion that accused/appellant Chhabilal exceeded the right of private defence.	

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14..	As per the provisions of Section 99 of the Cr.P.C. <i>"the right to private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence"</i> and Section 103 of the Cr.P.C. postulates <i>"the circumstances under which the right of private defence of property extends to cause death"</i> .	
15.	The present case is not covered under the circumstances which are enumerated in Section 103 of the Cr.P.C. as such accused/appellant Chhabilal had exceeded the right of private defence to property while inflicting the injuries with axe on the body of Sakoor therefore, we are of the considered opinion that the offence against the accused/appellant does not travel beyond 304-I of the IPC and the conviction of the accused/appellant under Section 302 of the IPC cannot be sustained.	
16.	In the result, the appeal of accused/appellant Chhabilal partly succeeds and the conviction and sentence imposed upon him under Section 302 of the IPC are set aside. Instead thereof the accused/appellant is convicted under Section 304-I of the IPC and sentenced to undergo RI for ten years. As per the record, the accused/appellant is in custody since 13.06.94 which has not been disputed by the learned Additional Public Prosecutor and thus, the accused/appellant has already undergone the sentence imposed upon him and as such he shall be set at liberty forthwith if not required in any other case.	
	Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge

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